

Magistrate Judge Charles B. Smith

Magistrate Judge Smith was born on June 10, 1940 in Philadelphia, Pennsylvania. He received his high school diploma with the Class of 209 from Central High School in Philadelphia. He received his B.A. from Dickinson College in 1962 and his J.D. from Dickinson School of Law in 1965 with honors. From 1970 to 1981, Judge Smith was in private practice in West Chester. In 1981 Judge Smith was elected to the Chester County Court of Common Pleas. Judge Smith was appointed as a United States Magistrate Judge of the United States District Court for the Eastern District of Pennsylvania in June 1992.

PRELIMINARY GENERAL MATTERS

1. Correspondence With the Court

Judge Smith permits correspondence from counsel on all matters, but prefers to handle matters by telephone.

2. Communication With Law Clerks

Judge Smith permits counsel to speak directly with his law clerks on housekeeping matters but law clerks should not be contacted on substantive matters.

3. Telephone Conferences

Judge Smith encourages the use of telephone conferences.

4. Oral Arguments and Evidentiary Hearings

Judge Smith does not set aside specific days or times for oral arguments or evidentiary hearings.

5. Pro Hac Vice Admissions

Judge Smith prefers submission of a formal motion and form of order for *pro hac vice* admissions. He will permit oral motions to be made, but counsel will be directed to prepare an appropriate order to memorialize the *pro hac vice* admission.

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CIVIL CASES

Pretrial Procedure

1. Pretrial/Status Conferences

Judge Smith regularly conducts pretrial/status and settlement conferences in cases pending before him.

Pretrial/status conferences, where appropriate, are scheduled promptly upon referral of the case to Judge Smith. Judge Smith encourages counsel to prepare the agenda for the pretrial/status conference. A sample of the form of a Scheduling Order often used by Judge Smith is attached; however, Judge Smith adheres to the pretrial orders and scheduling dates of the various District Court Judges to whom the case is assigned.

Continuances and Extensions

1. General Policy

Judge Smith expects counsel to adhere to the schedules once they are established. When possible, Judge Smith tries to accommodate counsel with regard to requests for reasonable changes.

2. Requests for Extensions and Continuances

Judge Smith does not impose any specific requirement as to how far in advance of a scheduled event counsel must request a continuance or extension. However, he expects such a request to be made as soon as the need becomes apparent and does not normally grant extensions and continuances which are requested inconveniently.

If counsel have agreed on a continuance or extension is contested, Judge Smith prefers that it be made by motion.

General Motion Practice

1. Oral Argument on Motions

Judge Smith will usually grant oral argument on motions.

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2. Reply and Surreply Briefs

If requested by counsel, reply briefs and supplementary briefs will generally be allowed by Judge Smith. However, as he normally rules from the bench, Judge Smith discourages untimely filing of such briefs.

3. Chamber Copies of Motion Papers

Judge Smith encourages counsel to send courtesy copies of important motion papers to his chambers.

Discovery Matters

1. Length of Discovery Period and Extensions

Judge Smith has no general policy regarding the length of time usually permitted for discovery.

2. Discovery Conferences and Dispute Resolution

If problems surface in discovery, Judge Smith prefers to hold discovery conferences. Judge Smith permits and encourages telephone conferences to resolve discovery disputes.

3. Confidentiality Agreements

Judge Smith has not specific policy concerning uncontested confidentiality orders, however he encourages counsel to inform him in advance about such an agreement.

4. Expert Witness

Judge Smith prefers that parties identify experts as early as possible and, in any event, no later than 45 days before the start of trial. Parties are to exchange written reports prior to the depositions of the experts.

Settlement

1. General Approach to Settlement and Non-jury Cases

Judge Smith's general approach to settlement negotiations is to discuss settlement with counsel throughout the pendency of a case. In personal injury cases, Judge Smith will involve the parties themselves in settlement negotiations.

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2. Referral of Settlement Negotiations to Another Judge

Judge Smith will usually refer settlement negotiations in non-jury cases to the originating District Court Judge or to another Magistrate Judge.

Arbitration

1. General Approach to Arbitration Cases

Judge Smith has no special practices or procedures for arbitration cases that differ from those used in cases certified as involving more than \$100,000.00. Judge Smith encourages counsel to treat arbitration seriously and prepare for it in the same manner as they would trial.

2. Scheduling of Trial De Novo From Arbitration

Judge Smith does set the trial date approximately thirty days after the arbitration date. Judge Smith does not have any special practices or procedures with respect to arbitrations resulting in a demand for trial *de novo*.

Proposed Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda

In addition to the requirements of Local Civil Rule 21, Judge Smith normally requires counsel to comply with the requirements set forth in the Scheduling Order, which requires counsel, on a specific date, to file with the Clerk and serve on opposing counsel: (a) a list of all exhibits to be used at trial; (b) a list showing each witness to be called at trial and setting forth the point or points to be established by the testimony of each witness; (c) memoranda of law on all legal and evidentiary issues expected to arise at trial; and (d) requests for instructions to the jury.

Trial Procedure

1. Scheduling of Cases

Judge Smith's normal practice is to promptly, with the input of counsel, assign a date certain for trial.

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2. Conflicts of Counsel

When counsel become aware of professional or personal conflicts that may affect the trial schedule, they should notify Judge Smith and opposing counsel immediately. Such notice should be confirmed in writing.

3. Cases Involving Out-of-Town Parties or Witnesses

When possible, Judge Smith attempts to adjust the trial schedules as necessary to give consideration to out-of-town attorneys, parties and witnesses.

4. Note taking by Jurors

Although Judge Smith does not prohibit note taking by jurors, he does not facilitate it. Judge Smith will, however, encourage note taking by jurors in longer, more complicated trials.

5. Trial Briefs

Although Judge Smith does not require the submission of trial briefs, he does welcome them.

6. Voir Dire

Judge Smith conducts *voir dire* in civil cases. Counsel may submit proposed *voir dire* questions at the final pretrial conference and may, when appropriate, conduct supplemental *voir dire* following Judge Smith's questions.

7. Side Bars

Judge Smith prefers to avoid side-bar conferences and encourages counsel to raise issues before trial begins or during recesses or adjournments.

8. In Limine Motions

Counsel may submit motions *in limine* at any time, however, motions *in limine* regarding expert witnesses should be presented well in advance of trial.

9. Examination of Witnesses Out of Sequence

Judge Smith permits counsel to call witnesses out of turn for the convenience of the witnesses.

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10. Opening Statements and Summations

Judge Smith does not impose a time limit on opening statements, but will tell counsel to keep their statements brief. With regard to summations, time limits generally are not imposed, but Judge Smith discusses with counsel the time needed and secures from all counsel an understanding as to an appropriate length of time.

11. Examination of Witnesses or Argument by More Than One Attorney

Judge Smith does not permit more than one attorney for a party to examine a single witness or to argue different points relating to the same issue before the Court.

12. Examination of Witnesses Beyond Redirect and Recross

Permission to examine witnesses beyond redirect and recross may be granted depending on the particular facts and circumstances of the case. Judge Smith will sustain an appropriate objection to such further examination if it goes beyond the scope of the previous examination of opposing counsel.

13. Videotaped Testimony

All objections to videotaped testimony must be raised prior to trial and will be ruled upon by Judge Smith accordingly. Judge Smith also prefers that the equipment be set up in advance to avoid wasting time in the courtroom.

14. Reading of Material Into the Record

Judge Smith has no special practice or policy about reading stipulations, pleadings, or discovery materials into the record.

15. Preparation of Exhibits

Judge Smith requires that all exhibits be pre-marked and pre-exchanged. Counsel should provide one copy of all trial exhibits to Judge Smith in advance of trial.

16. Offering Exhibits Into Evidence

Judge Smith prefers that counsel offer exhibits into evidence at the close of the case. Judge Smith prefers that counsel stipulate to the admissibility of all pieces of evidence.

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17. Motions for Judgment as a Matter of Law and Motions for Judgment on Partial Findings

Motions for judgment as a matter of law in jury trials under Federal Rule of Civil Procedure 50(a) and motions for judgment on partial findings in non-jury trials under Federal Rule of Civil Procedure 52(c) may be oral or written. Judge Smith rarely allows extensive oral argument on such motions.

18. Proposed Jury Instructions and Verdict Forms

Judge Smith prefers that counsel submit proposed jury instructions, but requests that each instruction *not* be printed on a separate page. Judge Smith usually conducts a charging conference on proposed jury instructions. Judge Smith encourages all counsel to stipulate that a verdict by five-sixths of the jurors is sufficient.

19. Proposed Findings of Fact and Conclusions of Law

Judge Smith requires counsel to submit proposed findings of fact and conclusions of law.

Jury Deliberations

1. Written Jury Instructions

Judge Smith almost never gives the jury a copy of the instructions. He will provide copies of parts of his charge dealing with specific elements of a crime or causes of action.

2. Exhibits in the Jury Room

Judge Smith does not allow any testimonial exhibits to be sent out to the jury room.

3. Handling of Jury Requests to Read Back Testimony or Replay Tapes

Judge Smith generally does not permit testimony to be read back or videotapes to be replayed. Judge Smith advises the jury to this policy at the beginning of trial.

4. Availability of Counsel During Jury Deliberations

Judge Smith does not require counsel to remain in the courthouse during deliberations, but he does require that they be available on ten minutes notice and that he be advised of their location.

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5. Taking the Verdict and Special Interrogatories

Judge Smith submits interrogatories to the jury.

6. Polling the Jury

Upon request, Judge Smith will permit the jury to be polled. Regardless of a request, Judge Smith normally asks the jury if they were unanimous in their decision.

7. Interviewing the Jury

Judge Smith permits counsel to interview jurors after the verdict has been recorded and the jury has been discharged. The jury is generally told that they may, but are not required to, speak with counsel.

CRIMINAL CASES

1. Approach to Oral Argument and Motions

Judge Smith permits oral argument on motions in criminal cases.

2. Pretrial Conferences

Judge Smith generally does not hold pretrial conferences in criminal cases unless the cases are complex or involve many defendants.

3. Voir Dire

Judge Smith always conducts *voir dire* in criminal cases, but encourages submission by counsel of proposed *voir dire* questions.

4. Sentencing Memoranda

Judge Smith generally encourages the submission of sentencing memoranda by both the Government and the defendant.

OTHER GENERAL MATTERS

Judge Smith prefers not to receive copies of appellate briefs when a decision rendered by him is appealed.